

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: January 26, 2022

CASE NO(S): OLT-21-001801
(Formerly) PL200456

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Sanders Garden Inc.
Subject: Request to amend the Official Plan - Failure of City of Hamilton to adopt the requested amendment
Purpose: To permit a mixed-use 9-storey development
Property Address/Description: 69 Sanders Boulevard and 1630 Main Street West
Municipality: City of Hamilton
Approval Authority File No.: UHOPA-18-014
OLT Case No.: OLT-21-001801
Legacy Case No.: PL200456
OLT Lead Case No.: OLT-21-001801
Legacy Lead Case No.: PL200456
OLT Case Name: Sanders Garden Inc. vs. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Sanders Garden Inc.
Subject: Application to amend Zoning By-law No. ZAC-18-035 - Neglect of the City of Hamilton to make a decision
Existing Zoning: "H" (Community Shopping and Commercial; Etc.) and Community Institutional (I2), Exception: 17, 20
Proposed Zoning: Site specific "E-3" (High Density Multiple Dwellings)
Purpose: To permit a mixed-use 9-storey development
Property Address/Description: 69 Sanders Boulevard and 1630 Main Street West

Municipality:	City of Hamilton
Municipality File No.:	ZAC-18-035
OLT Case No.:	OLT-21-001802
Legacy Case No.:	PL200457
OLT Lead Case No.:	OLT-21-001801
Legacy Lead Case No.:	PL200456

Heard: January 11 to 14, 2022 by video hearing

APPEARANCES:

Parties

Sanders Garden Inc.

City of Hamilton

Counsel

Russell D. Cheeseman
Stephanie Fleming

Aisling Flarity

DECISION DELIVERED BY T. PREVEDEL AND ORDER OF THE TRIBUNAL

[1] The matter before the Tribunal is an appeal under s. 22(7) and 34(11) of the *Planning Act* with respect to the failure of the City of Hamilton (“City”) to make a decision within the legislated timelines with respect to applications for an Official Plan Amendment (“OPA”) and a Zoning By-Law Amendment (“ZBLA”). The applications were filed by the Applicant/Appellant, Sanders Garden Inc. (“Sanders”), in respect of the property located at 1630 Main Street West and 69 Sanders Boulevard (“the subject property”/ “the subject lands”).

[2] Sanders proposes to redevelop the subject property and construct a mixed-use commercial/residential development which includes a 9-storey condominium building containing ground floor commercial space and 160 residential suites, as well as 2 townhouse blocks containing 22 residential units, for a total of 182 residential units.

Area Context

[3] The subject property is located in the Ainslie Wood North neighbourhood within the City of Hamilton. More specifically, the subject site is located on the north side of Main Street West between West Park Avenue and Westbourne Road.

[4] The subject property is of an irregular shape and has an area of approximately 0.5 hectares. The lands are currently developed with a 1-storey restaurant (currently vacant) and a 1-storey student residence building known as Binkley Hall (also currently vacant).

[5] The subject property is surrounded by a variety of uses. To the north, east and west are singled-detached and multiple dwellings. There are multi-unit residential buildings abutting the subject lands to the north and east, as well as a multiple dwelling on the west side of West Park Avenue. The multi-unit dwellings consist of 3 and 3.5-storey walk-up apartments.

[6] Further west along Main Street West, just beyond the hydro corridor, is a 9-storey student residence on the north side of the road.

[7] South of the subject lands are predominantly commercial uses.

[8] East of Cootes Drive, approximately 800 metres from the subject lands, is the main campus of McMaster University, a major activity centre that is a focal point of the neighbourhood.

Proposed Development

[9] The intent of the proposed development is to establish a 9-storey mixed-use building with ground floor commercial uses and dwelling units above fronting onto Main

Street West, as well as 2 townhouse blocks or maisonettes situated north of the condominium tower and aligned in a north/south direction towards Sanders Boulevard.

[10] The development is comprised of 160 residential suites in the mixed-use building and 22 residential suites in the maisonette buildings. Indoor amenity space will be provided on the ground floor of the multiple dwelling. In addition, parking at a ratio of 0.6 spaces per residential unit and 18 bicycles will be provided on site.

The Hearing

[11] The Hearing of the Appeal took place over the course of four days. The conduct of the Hearing was governed by a procedural order issued on July 2, 2021.

[12] The Tribunal heard from 3 witnesses, on behalf of the Parties. All witnesses were qualified to provide expert evidence in their respective fields, as follows:

Appellant's Witnesses

- Matthew Johnston – land use planning;
- Ralph Bouwmeester – shadow analysis;

City's Witness

- Mark Kehler – land use planning.

[13] It was agreed, on consent of the Parties, that the expert witness for transportation would not be required for the Hearing as all transportation issues had been resolved.

The Issues

[14] The Issues List forming part of the Procedural Order governed the presentation of the evidence and the Hearing of this Appeal. From a policy context, the issues before the Tribunal require the general determinations of whether the proposed OPA and ZBLA have sufficient regard to the provincial interests listed in s. 2 of the *Planning Act*, is consistent with the Provincial Policy Statement, 2020 (“PPS”), conforms to the Growth Plan for the Greater Golden Horseshoe, 2019 (“Growth Plan”), conforms to the Urban Hamilton Official Plan (“UHOP”) and the Ainslie Wood Westdale Secondary Plan (“AWWSP”), and, in general, represents good planning and is in the public interest.

[15] Based on the expert evidence both in written submissions and oral testimony during the course of this Hearing, the Tribunal notes that a majority of planning matters related to provincial policies are uncontested between the two planning experts. The Tribunal also notes that both experts agree that the subject lands are under-utilized and are suitable for additional density.

[16] As well, the evidence presented by both planning experts confirmed that the proposed 2 townhouse blocks are not contested at this Hearing.

[17] The only area of disagreement between the experts relate to built form and massing of the proposed 9-storey structure and its resultant shadow and overlook/privacy impacts.

[18] At the outset of the Hearing, Mr. Johnston provided the Tribunal with a comprehensive overview of the area context, including aerial and visual photographs to aid the Tribunal.

[19] He advised the Tribunal that the neighbourhood where the subject property resides can be characterized by a mix of residential types, including single detached and multi-unit dwellings. A development proposal that is located directly across from

the site on Main Street looks to be advertising a 24-storey residential building nearby. Additionally, east of the site at 9 Westbourne Road is a zoning amendment to convert an existing school into a student residence. He explained that indicates the community is in the process of intensifying from low-rise, low-density built forms to those with higher densities.

[20] He opined that the neighbourhood is evolving and that “change is coming”.

[21] Mr. Johnston also provided a chronological overview of the extensive application process with ongoing dialogue between Sanders and the City, during that time 7 separate submissions were made over a two-year period to progressively address concerns raised by the public and City staff.

The *Planning Act*

[22] At the outset of his oral testimony, Mr. Johnston provided the Tribunal with a thorough review of the requirements under s. 2 of the *Planning Act*, with his professional opinion and commentary on subsections (a) through to subsection (r), and concluded by providing his opinion that the proposal had appropriate regard for matters of provincial interest.

[23] He noted that no natural heritage or built heritage features were identified on the subject lands.

[24] Mr. Kehler, the City’s witness, did not provide any commentary in his witness statement or oral testimony regarding matters of provincial interest as defined in the *Planning Act*, the Tribunal is thus left to assume that this matter is uncontested by the City.

Provincial Policy Statement (2020)

[25] Based on the uncontroverted evidence presented during the course of this Hearing from the two land use planning experts, the Tribunal finds that the proposal is consistent with the PPS.

Growth Plan for the Greater Golden Horseshoe (2019)

[26] Again, the uncontroverted evidence as presented by both of the land use planning experts confirms that the proposal conforms to the Growth Plan and is not contested at this Hearing.

[27] Mr. Johnston did note, however, that the Growth Plan indicates a target population for the City of 820,000 persons by 2051. At the present time, there is a disconnect between the Growth Plan and the UHOP, and the City has initiated a Municipal Comprehensive Review on the premise of no urban boundary expansion in order to properly respond to these target population numbers.

Urban Hamilton Official Plan

[28] Mr. Johnston explained to the Tribunal that the UHOP was adopted by Council on July 9, 2009 and approved by the Ministry of Municipal Affairs and Housing on March 16, 2011.

[29] He stated that the subject lands are located in an area that is designated as *Neighbourhoods* which is indicated on Schedule D: Urban Structures in the UHOP. This designation embodies the concept of a complete community and primarily consists of residential uses and complementary facilities and services to serve residents. The intent of this *Neighbourhoods* designation is to allow for the continued evolution of neighbourhoods including compatible residential intensification with a full range of housing forms and types.

[30] The subject lands are in a Secondary Corridor, which is intended to maintain and enhance the mixed-use nature of major streets linking communities and creating a vibrant pedestrian and transit-oriented place through investment in infrastructure, residential intensification, infill and redevelopment.

Ainslie Wood Westdale Secondary Plan

[31] Mr. Johnston also made reference to the AWWSP which was approved by City Council in 2005. The subject lands are designated mixed-use medium density, which aims to provide a wide variety of housing forms and densities for many types of households, encourage new infill housing to be compatible with surrounding residential development and create opportunities for and direct higher densities to locate along major roads.

[32] Mr. Johnston told the Tribunal that this density designation permits residential and commercial uses for either a stand-alone development or in a mixed-use building, but to a maximum height of three storeys with residential densities of 30 – 49 units per gross hectare being permitted.

[33] Mr. Johnston explained to the Tribunal that, since the proposal for the subject lands has a residential density of 385 dwelling units per hectare and a maximum building height of 9 storeys for the multiple dwelling, a proposed OPA is being brought forward to include a new site specific policy for the subject lands to permit the proposed development.

[34] Mr. Johnston opined that the Secondary Plan, which was approved in 2005 and has not been given an over-haul to align with provincial policies, is dated and overly restrictive with respect to building heights and densities.

[35] The Tribunal notes that the issue of this Secondary Plan is at the root of the major disconnect between the Appellant and the City in terms of building height and massing and adherence to the Zoning By-Law regulations associated with same.

Issue No. 1: Does the proposal comply with the policies of the UHOP, including but not limited to policies E.2.4 related to Urban Corridors and E.4.0 related to Mixed Use-Medium Density Designation?

[36] Mr. Johnston advised the Tribunal that the City has identified the area where the subject lands are located between the McMaster Campus and Osler Drive as a Secondary Corridor. The subject lands have frontage on Main Street West, which has been identified as a major arterial road.

[37] With respect to policy E.2.4, Mr. Johnston opined that the proposal supports the vision of the UHOP by transforming under-utilized land, and increasing densities to support growth objectives, allowing this neighbourhood to evolve.

[38] He further opined that the proposal conforms to the intent of the Secondary Corridor designation by contributing to establish Main Street West as a vibrant pedestrian and transit-oriented place, the subject lands being an optimal location for higher density land uses that would support the proposed Light Rail Transit service.

[39] Mr. Kehler agreed that the proposal complied with the intended function and permitted uses of the Secondary Corridor element of the Urban Structure and Mixed Use-Medium Density designation relating to policies E.2.4.3, E.2.4.6, E.4.6.2 and E.4.6.5. He opined that the proposal is transit supportive, maintains the commercial function of Main Street West by providing commercial space at grade and would appropriately increase the proportion of multiple storey, mixed use buildings with at-grade commercial uses along the Main Street West Secondary Corridor.

[40] Mr. Kehler further confirmed that the two stacked townhouse dwellings, in his opinion, comply fully with policies E.2.4 and E.4.0 and that they provide for an appropriate built form within the neighbourhood.

[41] Mr. Kehler made reference to the AWWSP, which establishes a maximum building height of three storeys for the subject property and the associated Zoning By-law includes setback and step back provisions to minimize the effects of shadowing and overview on adjacent properties. He was adamant in his opinion that the proposed 9-storey condominium tower did not conform to the requirements of this Secondary Plan.

[42] He opined that the proposed 9-storey mixed-use building fails to provide for an appropriate gradation of building heights on site and within the neighborhood by introducing an abrupt increase in building height within an existing built form context, currently characterized by 1 to 3.5-storey buildings.

[43] In response, Mr. Johnston told the Tribunal that, in fact, the proposal provides appropriate gradation of height from the existing built form of single detached dwellings to a 3.5-storey walk-up apartment and then to the proposed 9-storey condominium. He disagreed with Mr. Kehler's assertion that additional height must be accompanied by additional setbacks and step backs. Mr. Johnston told the Tribunal that policy E.4.6.8 states that the proposal must demonstrate no adverse shadow impacts. The policy also states that the proposal may include angular plane adjustments to minimize the height appearance where necessary.

[44] From the planning evidence presented by both experts, the Tribunal notes that both experts agree that the proposal has regard for provincial policies and generally conforms to the UHOP, with the exception that Mr. Kehler is rigidly adhering to the policies of the AWWSP which he states supersede the UHOP policies and limit heights to 3-storeys.

[45] In this instance, the Tribunal prefers the evidence presented by Mr. Johnston, and is inclined to agree that the built form being proposed is acceptable. The issue of AWWSP policies will be discussed further in this Decision.

Issue No. 2: Does the proposal meet the residential intensification policies of the Urban Hamilton Official Plan, including policies B.2.4.1.4 and B.2.4.2.2?

[46] Mr. Johnston provided evidence to the fact that the proposed development has been designed to be compatible with the existing character and function of the neighborhood. He opined that the development respects the character, scale and appearance of the surrounding area which is characterized by variation. The proposal enhances the character of the area by further optimizing an under-utilized parcel along one of the City's main corridors. It builds upon the established patterns and built forms by transitioning height and density from the low rise single detached dwellings to the north to a 3.5-storey walk-up apartment to the proposed 9-storey building. This transition, in his opinion, maintains the angular plane as required by the Hamilton City Wide Corridor Planning Principles and Design Guidelines.

[47] Mr. Johnson also took the Tribunal to Table 1 of the above-noted guidelines, which shows a sliding scale of multiple dwellings up to 12 storeys being envisioned for properties with various depths. He explained that the purpose of the table is to identify that a sliding scale can be utilized to provide guidance when determining potential building heights related to lot size, width, and depth.

[48] Mr. Johnston further stated that the proposal will improve housing availability in the neighborhood, particularly for families in the City where a shortage of appropriate rental housing currently exists. The proposed development, consisting of condominium studios, 1 and 2-bedroom residential units will contribute to a range of dwelling types and tenures within the neighbourhood.

[49] Mr. Johnston opined that the proposal fulfils the intent of the Urban Structure designation as it is mixed use, will provide for intensification along a major arterial road and is located in close proximity to existing and future public transit routes.

[50] Mr. Johnston next took the Tribunal to the definition of compatibility in the UHOP and opined that the proposal is in fact compatible with the surrounding land uses. He opined that compatibility does not necessarily mean the “same as” but refers to different land uses co-existing in harmony with each other.

[51] Mr. Kehler agreed that the proposed development contributes to achieve a range of dwelling types by providing both apartment style dwellings and grade related stacked townhouses. He also confirmed that there is adequate water, sanitary and stormwater infrastructure to service the development and that the traffic generated by the proposal can be accommodated within the existing road network.

[52] However, he disagreed with Mr. Johnston and stated that, in his opinion, the proposal does not maintain the established character of the neighborhood by introducing a 9-storey building adjacent to a built form that is dominated by 1 to 3.5 storey buildings.

[53] The Tribunal notes that Mr. Kehler’s concerns with respect to the gradation of the 9-storey proposal adjacent to a 3.5-storey apartment dwelling is primarily based on the zoning regulations in place to implement the AWWSP. The Tribunal notes that the 45-degree angular plane taken from the south property line of the single detached dwelling north of the proposal does not breach the 9-storey structure, whereas in fact the existing 3.5 storeys apartment actually breaches this plane.

[54] The Tribunal prefers the evidence provided by Mr. Johnston and finds that the proposal meets the residential intensification policies.

Issue No. 3: Does the proposed development maintain or enhance the character of the area or neighbourhood?

[55] Mr. Johnston advised the Tribunal that the proposed development is located on Main Street West, which is identified as a major arterial road and a Secondary Corridor within the UHOP. The community is in a state of transition, an evolution from low rise dwellings to more dense residential built forms such as multiple dwellings and townhouses. The subject site is a 5-kilometre drive to the downtown Urban Growth Centre Node and approximately 800 metres west of the McMaster University campus.

[56] Mr. Johnston opined that the subject lands are a natural candidate for population growth and intensification over the coming decades due to their proximity to major institutions, commercial and retail centres and higher order transit.

[57] Mr. Johnston told the Tribunal that the proposal will contribute to a range of housing types and densities in the neighborhood and, in his opinion, the proposed built form exemplifies an adequate transition in height and density.

[58] Mr. Kehler, in his oral testimony, agreed that the mixed-use corridor is anticipated to experience more significant change in its evolution, however, he reminded the Tribunal that the character of the surrounding neighborhood consists of a stable residential area.

[59] While he agreed that the proposed stacked townhouse dwellings maintain the low rise residential character of the neighborhood, he remained adamantly opposed to the 9-storey mixed use building which, in his opinion, does not provide for an appropriate transition and building height that would maintain or enhance the character of the adjacent stable residential area.

[60] Mr. Kehler opined that, if approved, the proposed development would alter the character of the corridor in a manner that is not in keeping with the intent of the UHOP

as he believes that the Main Street corridor consists of moderately scaled buildings that achieve an appropriate transition in building height to adjacent residential areas.

Issue No. 4: Is the proposed height, scale, massing and arrangement of buildings and structures compatible with the existing and future uses in the surrounding area?

Issue No. 6: Is the subject proposal compatible with the surrounding existing uses?

[61] It was agreed on consent of the Parties that Issue Nos. 4 and 6 were identical and would be dealt with at the same time.

[62] Mr. Johnston took the Tribunal to the definition of *compatible/compatibility* in the UHOP, which reads as follows:

means land uses and building forms that are mutually tolerant and capable of existing together in harmony within an area. Compatibility or compatible should not be narrowly interpreted to mean the same as or even as being similar to.

[63] On this basis, Mr. Johnston opined that the proposed development is compatible with the surrounding context of the site as the built form and supporting studies demonstrate the proposed development does not create any undue or adverse impacts on the neighborhood.

[64] Mr. Kehler did not agree with the opinions expressed by Mr. Johnston on the issue of compatibility. He took the Tribunal to various sections of the Corridor Guidelines and opined that property size, and in particular depth, is an important consideration when determining the development potential of the subject lands.

[65] Mr. Kehler expressed his concerns that, if the guidelines were followed properly in accordance with the AWWSP and zoning regulations, then any proposal above three-storeys would require step backs to meet the angular plane guidelines.

[66] He also expressed his concern regarding the potential canyon effect along Main Street West, and that the angular plane was breached on the ninth floor by 2 degrees if the guidelines were applied.

[67] Mr. Johnston gave evidence regarding the existing 9-storey residence at 1686 Main Street West. He told the Tribunal that this building currently breaches the maximum 45-degree angular plane. With the understanding that this structure was approved prior to the establishment of the Corridor Guidelines, Mr. Johnston opined to the Tribunal that the structure does not negatively impact the Main Street corridor.

[68] With respect to the angular planes along the Main Street West corridor, the Tribunal accepts the evidence proffered by Mr. Johnston that the minor breach of 2 degrees in accordance with the guidelines will not negatively impact pedestrians on the ground. In fact, as suggested by Mr. Johnston, the guidelines refer to the 45-degree angular plane originating at a point (80%) of the road width from the face of building, which would put the pedestrian standing in the middle of the travelled lane. The actual angular plane, if measured from the sidewalk, is within the guidelines.

[69] The Tribunal understands that 1686 Main Street West is not comparable to the situation at 1630 Main Street West regarding the surrounding context but accepts the evidence of Mr. Johnston regarding the lack of impact on the angular plane for pedestrians along the road.

[70] The Tribunal also notes, that if it were to accept the evidence of Mr. Kehler and allow the guidelines to be rigidly adhered to, the practical allowable and buildable height of the condominium building would be reduced to 3-storeys or perhaps 4-storeys at the

most.. This may satisfy the current AWWSP policies but will not be in compliance with provincial policies.

Issue No. 5: Does the proposed Development respect the existing built form of adjacent neighborhoods by providing appropriate setbacks and step backs graduation in building height building mass and densities by locating and designing the development to provide adequate light access minimize the effects of shadowing and overview on properties in adjacent neighborhoods ?

[71] Mr. Bouwmeester is a sun/shadow expert with many years of experience in this field, having provided expert testimony to the Tribunal on matters related to sun shadow impact on many previous occasions.

[72] Mr. Bouwmeester took the Tribunal to his December 2019 shadow study and explained in detail the projected shadowing resulting from the proposal on an hourly basis for both the spring and summer equinoxes.

[73] Mr. Bouwmeester used three scenarios for his shadow study: the first being the proposed 9-storey proposal, the second being a theoretical 8-storey concept and the third being the “as of right” zoning heights. Mr. Johnston explained that the second scenario was based on an assumption of 6-8 storey permissions allowed by the Secondary Corridor envisioned by the UHOP Urban Structure.

[74] Mr. Kehler advised the Tribunal that he objected to the use of the second scenario above, as it had no approved status with the City.

[75] The Tribunal tends to agree with Mr. Kehler’s concern regarding the second scenario and will take this matter into consideration when weighing the evidence.

[76] One of the key concerns raised by Mr. Kehler was the impact of shadows from the proposed 9-storey condominium on the existing 3.5 storey walk-up apartment building at 10 West Park Avenue.

[77] Mr. Johnston provided the Tribunal with several photographs showing the rear of 10 West Park Avenue. The photographs indicated that there was no existing amenity space behind the building. Mr. Johnston further opined that the existing balconies at the rear, with a depth of only 1 metre, are not considered as amenity space.

[78] He advised the Tribunal that, as demonstrated in the Comparative Sun/Shadow Study dated December 2, 2019, the proposed building creates minor incremental shade on the apartment building to the north above and beyond the as-of-right condition. In addition, the private amenity areas (i.e., balconies) on the east façade of the apartment building are not significantly impacted by the proposal in terms of shadowing when taking the existing condition into consideration.

[79] He advised the Tribunal regarding the email correspondence from Mr. Bouwmeester which demonstrates that the balconies are shaded by their own building between approximately 12:00 p.m. and sunset on March 21st. When applying the City's Shadow Impact Criteria for Downtown Hamilton, the existing conditions would not meet the minimum requirement for 3 hours of sun coverage between 10:00 a.m. and 4:00 p.m. as measured on March 21st on private outdoor amenity areas. The shadow caused by the proposed building massing therefore does not have any significant adverse effects on the private amenity areas of this existing apartment building.

[80] The Tribunal, in reviewing the evidence presented by both Messrs. Johnston and Bouwmeester, finds that the shadow impact from the proposal is tolerable given the existing condition. Mr. Kehler's concern regarding use of the 8-storey scenario as a comparable is legitimate, but the Tribunal nevertheless prefers the evidence proffered by the Appellant's witnesses that shadowing on the surroundings, in particular 10 West Park Avenue, is limited and acceptable.

Issue No. 7: Does the proposal comply with the Mixed Use-Medium Density and Mixed Use-Medium Density-Pedestrian Focus policies of the Ainslie Wood Westdale Secondary Plan, including but not limited to policies B.6.2.7.2 b), d) and e)?

[81] Mr. Johnston opined that the proposal is in keeping with the predominant character of the area as required by the above policies. In this regard, he stated that the character of the area is composed of singles, semis and low-rise multiple dwellings. The ZBLA prescribes appropriate setbacks while materiality will be further implemented at the site plan stage.

[82] Mr. Johnston told the Tribunal that the existing Secondary Plan was adopted in 2005 prior to the current provincial policy framework and Growth Plan. Based on the subject property being located within the Urban Settlement Boundary for the Municipality, the proposed development aids the City in achieving their growth target and implements appropriate intensification within the delineated built-up areas. In planning to 2051, as part of the Growth-Related Integrated Development Strategy (GRIDS 2) municipal comprehensive review being conducted by the City, staff have recommended the “Ambitious Density” target to be incorporated into the UHOP. In efforts to minimize the extent of an urban boundary expansion, this City staff recommendation calls for 50% of growth to be located within the built-up area to 2031, 60% to 2041 and 70% to 2051 as per City Staff Report No. PED17010. As expressed by City staff, it is estimated that approximately 10-12 development projects like the one proposed will need to be implemented per year for the City to meet the targets it has set out for itself. The proposed development helps the Municipality in achieving this target through the redevelopment and appropriate intensification of an under-utilized site, which is on a corridor where high density land uses are already directed.

[83] Mr. Johnston further stated that, at the March 29, 2021 General Issues Committee meeting, staff identified the historic inability to meet provincial intensification requirements. Currently, UHOP requires 20% of all intensification in the Downtown, 40% in the Nodes and Corridors and 40% in Neighbourhoods; but since 2006 to 2018,

only 13% actually occurred in downtown and only 19% in the nodes and corridors. Over that same period, 40% of all growth was supposed to be via intensification but instead, only hit 42% in 2015. All other years ranged between 25-38%.

[84] Mr. Johnston concluded by stating his strong opinion that developments like the one proposed are critical to achieve the required intensification targets.

[85] Mr. Kehler stated that staff did not raise concerns with the materials shown on the conceptual renderings, and agreed that the materials can be refined further at the site plan control stage. He also stated that the ground level setbacks are in keeping with the existing and planned character of the area by locating the 9-storey building at the street line with retail at grade to provide for a pedestrian oriented mixed use development.

[86] However, Mr. Kehler opined that the design would be made stronger by introducing a physical step back above the third storey that would reduce the perceived scale of the building from the street.

[87] Mr. Kehler made reference to the maximum 3-storey building height established in policy B.6.2.7.2 b) of the Secondary Plan which allows for intensification and is reflective of the existing built forms along Main Street West.

[88] Mr. Kehler rigidly adhered to the Secondary Plan policies and opined that the existing proposal for a 9-storey building along Main Street West does not meet the intent of policy B.6.2.7.2 b) because appropriate design measures in the form of setbacks and an appropriate gradation of heights in the form of step backs have not been taken to mitigate the impact of the additional building in terms of built form, transition, shadow and overlook.

[89] Under cross-examination, Mr. Kehler agreed he was aware of the Municipal Comprehensive Review underway at the City, but he argued that this study is premature at the present time and relied solely on the existing Secondary Plan policies.

[90] In this case, the Tribunal prefers the evidence proffered by Mr. Johnston, as applications such as these need to be reviewed through the lens of the current PPS and Growth Plan. The AWWSP has not been updated, with the exception of some site-specific amendments, since 2005.

Issue No. 8: Does the proposal comply with the urban design policies of the Ainslie Wood Westdale Secondary Plan, including but not limited to B.6.2.13.1 b) and B.6.2.13.2 c) as it relates to the proposed 9-Storey building with a density of 385 units per gross hectare?

[91] Mr. Johnston explained to the Tribunal the nature of the 1-metre step back on the west face of the 9-storey condominium, as well as the proposed terracing on the north side of the proposed building. He opined that the architectural work undertaken by Architectural Design Inc. ensured that the proposed development would provide a gateway into the existing neighbourhood.

[92] Mr. Kehler remained firm in his opinion that the proposed 9-storey mixed use building does not compliment and does not enhance the existing character of the surrounding neighborhood that features 1 to 3.5-storey buildings. The proposed massing of the building does not achieve an appropriate transition in scale in the form of step backs to the adjacent neighborhood to the north.

Issue No. 9: Does the proposal have any adverse impacts on the surrounding existing development with respect to overlook, privacy, buffering between neighbouring land uses and, traffic and if so, how have these impacts been appropriately mitigated?

[93] This issue has already been addressed by both land use planning experts in their expressed opinions on previous issues related to built form and massing.

[94] Mr. Kehler did make reference to the buffering proposed on site in the form of landscaped areas along the east and west property lines. In addition, 1.8 metres privacy fences are proposed along property lines to mitigate adverse impacts from traffic utilizing the access driveway and ramp to the underground parking. If the proposed application is approved, he recommended that the 0.67 metres strip shown between the access driveway from West Park Avenue and the adjacent property to the north (10 West Park Avenue) be a required planting strip in the Zoning By-law to further mitigate noise and light impacts from vehicle traffic.

Issue No. 10: Are the proposed site-specific performance standards compatible and in keeping with the intent of the Zoning By-Law?

[95] Policy 1.1.3.4 of the PPS states: “appropriate development standards should be promoted which facilitate intensification, redevelopment and compact form, while avoiding or mitigating risks to public health and safety”.

[96] Mr. Kehler expressed some concerns in his Reply Witness Statement regarding the proposed wording in the submitted draft ZBLA, which Mr. Johnston agreed with.

[97] In response, Mr. Johnston introduced a revised draft of the proposed ZBLA as Exhibit 7 during the Hearing and a revised draft of the OPA as Exhibit 4, to address and “button up” some loose ends.

[98] Mr. Kehler was generally satisfied with the proposed revisions to the draft ZBLA as presented in Exhibit 7. However, Mr. Kehler stated he could not support the draft OPA for the reasons stated earlier with respect to the proposed building heights above 3-storeys.

Issue No. 11: What, if any, holding provisions are appropriate for the development?

[99] Mr. Kehler told the Tribunal that a Record of Site Condition (“RSC”) is required for the subject property due to its former commercial uses. He stated that standard practice in the City is to require a Holding Provision prohibiting development until acknowledgment is received from the Ministry of the Environment, Conservation and Parks that a RSC has been filed. Therefore, should the applications be approved, he recommended that a Holding Provision be included in the ZBLA.

[100] Mr. Johnston indicated that, in his opinion, there was no direct cause or need for a Holding Provision. He stated that the RSC was applicable law, and this had to be satisfied prior to the issuance of a building permit by the Chief Building Official.

Issue No. 12: Does the proposed development represent good land use planning and is in the public interest?

[101] Mr. Johnston opined that it was his independent professional planning opinion that the proposed development represents good land use planning and is in the public interest. The proposed OPA and ZBLA have regard for matters of provincial interest as identified in the *Planning Act*, are consistent with the PPS, fully comply with and implement the Growth Plan, complies with and implements the goals and objectives of the Official Plan and Secondary Plan and implement the intent of the Zoning By-Law.

[102] Mr. Kehler agreed that the subject property is an appropriate location for residential intensification and mixed-use development. He further agreed that this proposal was consistent with provincial policies and supported the municipal policy framework.

[103] However, Mr. Kehler was consistent with his opinion that the proposed 9-storey mixed use building is not compatible with the future mid-rise character of the Main

Street West corridor. He stated that the lot depth of 26.48 metres was less than the minimum 35 metres recommended in the Corridor Guidelines, and the increase over the permitted 3-storey height as permitted in the AWWSP is not compatible with the scale and character of the existing neighbourhoods.

[104] Mr. Kehler opined that the proposed development does not represent good land use planning and is not in the public interest.

Analysis and Disposition

[105] Over the course of this four-day Hearing, with oral and written testimony submitted by the expert witnesses, it became evident that the proposed OPA and ZBLA has regards for matters of provincial interest as outlined under s. 2 of the *Planning Act*. This was uncontested by the City's land use planner.

[106] The Tribunal also notes that the proposal is consistent with the PPS and conforms with the Growth Plan, and this fact is uncontested by the two land use planners.

[107] The only issue left is the building massing and the associated impacts of overlook, privacy, and shadowing.

[108] The Tribunal heard, during the course of this Hearing, that the AWWSP, which forms part of the UHOP, was approved in 2005, some 17 years ago. While some site-specific amendments have been approved by the City, the fact remains that the Secondary Plan is dated and has not been amended to comply with current provincial policies.

[109] The Tribunal also heard that the City has embarked on a Municipal Comprehensive Review (GRIDS 2) in an effort to address provincial policy direction, and this work is currently actively underway. Although not at issue at this Hearing, the

Tribunal heard that the City plans to embark on an “aggressive” approach to meet Growth Plan targets.

[110] The City’s land use planner stated that the most important vehicle for implementation of the PPS is the Official Plan. He relies on the AWWSP policies and Corridor Guidelines to form his opinion that this proposal is not good planning.

[111] In contrast to this position of Mr. Kehler, the Tribunal notes that Policy 4.6 of the PPS states that “planning authorities shall keep their official plans up-to-date with this PPS”. The Tribunal notes that an OPA is in fact a means of keeping the City’s Official Plan up to date with the current PPS.

[112] The Tribunal finds that the reference in the AWWSP to absolute limits on heights and densities is an unreasonable and overly rigid policy expectation that, if enforced literally as suggested by Mr. Kehler, would have a detrimental effect on achieving good planning outcomes as envisioned by provincial policy.

[113] With respect to the impact of building massing on 10 West Park Avenue, the Tribunal finds that the impacts are tolerable. Being compatible with implies nothing more than being capable of existing together in harmony.

[114] With respect to a request for a Holding Provision, the Tribunal finds that the RSC is applicable law and will be required to be fulfilled prior to a Building Permit being issued. That being said, the Tribunal finds that there is no need to have a Holding Provision, as this would add another layer of bureaucracy to the process.

[115] The Tribunal, having the benefit of four days of expert witness testimony regarding all the issues and based on the evidence provided, is satisfied that the proposed OPA and ZBLA, entered into evidence as Exhibit Nos. 4 and 7 respectively, are appropriate for this location. The Tribunal finds that the proposed development represents good planning and has regards for matters of provincial interest under s. 2 of

the *Planning Act*, is consistent with the PPS, conforms with the Growth Plan, conforms to the UHOP, generally conforms to the Secondary Plan and represents good planning.

ORDER

[116] **The Tribunal Orders** that the appeal is allowed, and the Official Plan for the City of Hamilton is amended as set out in Attachment 1 to this Order.

[117] **The Tribunal further Orders** that the appeal is allowed, and the Zoning By-Law No. 05-200 is amended as set out in Attachment 2 to this Order.

[118] **The Tribunal further Orders** that the requirement of a 0.67 metre planting strip along the north property line adjacent to 10 West Park Avenue be incorporated in the Zoning By-Law and addressed at the Site Plan Approval stage.

“T. Prevedel”

T. PREVEDEL
MEMBER

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

OLT-21-001801 - Attachment 1

Urban Hamilton Official Plan Amendment No. ____

The following text constitutes Official Plan Amendment No. ____ to the Urban Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose of the Official Plan Amendment (OPA) is to identify a Site Specific Policy area to permit a maximum gross residential density of 385 units per hectare and a maximum height of nine storeys for a multiple dwelling, whereas the permitted gross residential density shall generally be about 30-49 units per hectare and the permitted maximum height is three storeys for "Mixed Use – Medium Density" areas in Policy B.6.2.7 in the Ainslie Wood Westdale Secondary Plan.

2.0 Location:

The lands affected by this Amendment are All of Lots 1, 2 and 3, Registered Plan 904; and Lot 20, Registrar's Compiled Plan 1475, in the City of Hamilton, municipally known as 69 Sanders Boulevard and 1630 Main Street West.

3.0 Basis:

The basis for permitting this Amendment is as follows:

- The proposed Amendment is consistent with the Provincial Policy Statement and conforms to the Growth Plan for the Greater Golden Horseshoe;
- The proposed Amendment will encourage residential intensification with a diverse housing mix, while supporting the existing and planned public transit in the area; and,
- The proposed built form is a permitted use in the Urban Hamilton Official Plan.

4.0 Actual Changes:

4.1 Map Changes

- 4.1.1 Volume 2 – Map B.6.2-1 Ainslie Wood Westdale Secondary Land Use Plan is further amended by identifying the subject lands as Site Specific Policy – Area ____, as shown on Appendix A, attached.

4.2 Text Changes

- 4.2.1 Volume 2, Chapter B – Hamilton Secondary Plans, Section 6.2 Ainslie Wood Westdale Secondary Plan is amended by adding a new Site Specific Policy – Area ____ to read as follows:

Site Specific Policy – Area ____

- 16.2.17.7 Notwithstanding Policy B.6.2.7.2 e) and h) ii) for the lands designated Mixed Use – Medium

Density, located at 1630 Main Street West and 69 Sanders Boulevard, and identified as Site Specific Policy – Area ___ on Map B.6.2-1 – Ainslie Wood Westdale – Land Use Plan, the following policies shall apply:

- a) The maximum residential density shall be 385 units per gross hectare; and,
- b) The maximum height of any multiple dwelling shall be limited to nine storeys.

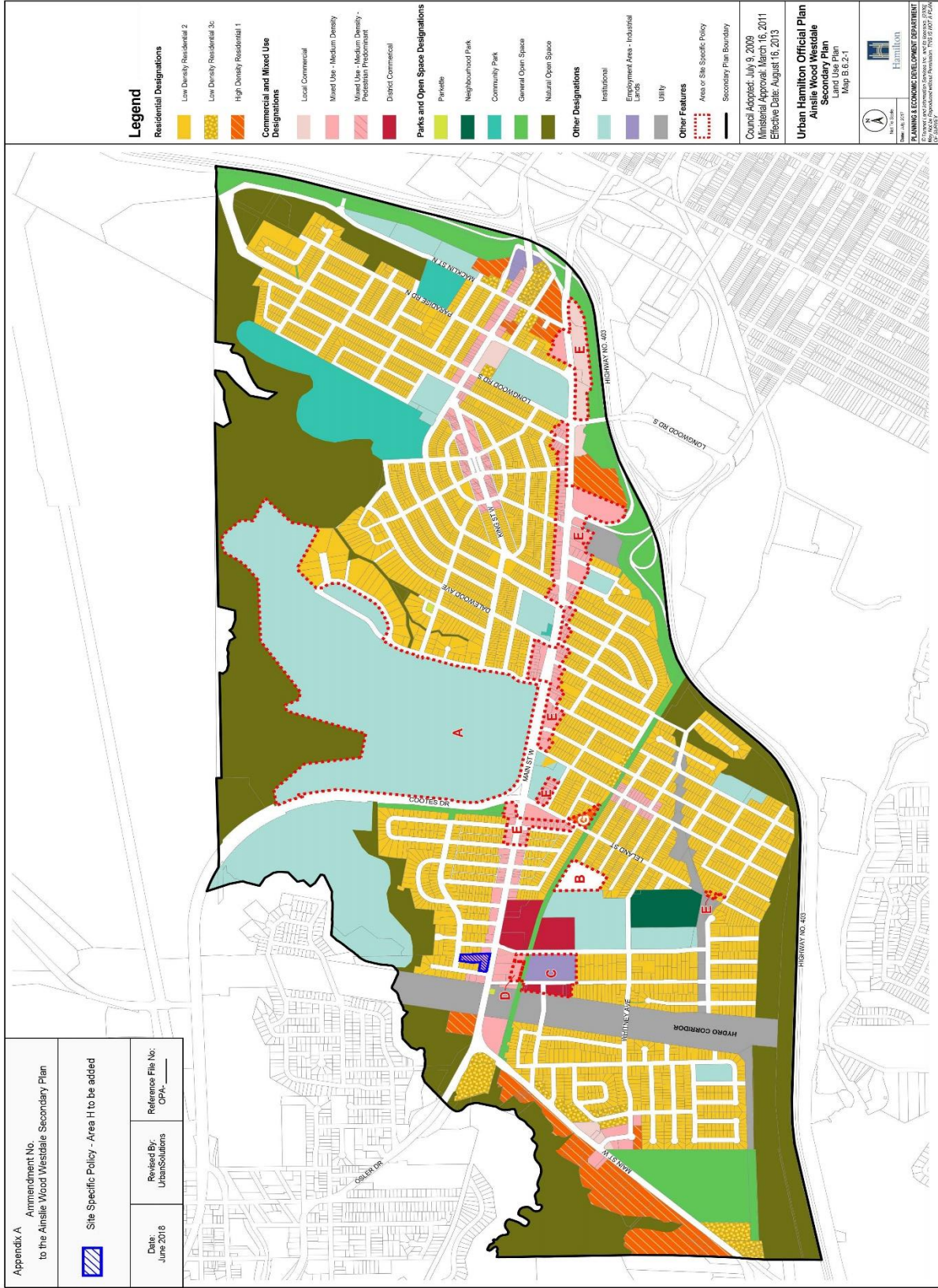
5.0 Implementation:

An implementing Zoning By-Law and Site Plan Agreement will give effect to this Amendment.

This is Schedule “1” to By-Law No. 18-___, passed on the ___ day of _____, 2019.

Mayor

Clerk



OLT-21-001801 - Attachment 2

CITY OF HAMILTON

BY-LAW NO. - ____

**To Amend Zoning By-law No. 05-200 (Hamilton), Respecting Lands Located at
1630 Main Street West and 69 Sanders Boulevard**

WHEREAS the City of Hamilton has in force several Zoning By-laws which apply to different areas incorporated into the City by virtue of the *City of Hamilton Act 1999*, Statutes of Ontario, 1999 Chap.14;

WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law No. 05-200;

WHEREAS the Council of the City of Hamilton, in adopting Item ____ of Report PED22____ of the Planning Committee, at its meeting held on the ____ th day of ____ 2022, which recommended that Zoning By-law No. 05-200 be amended as hereinafter provided; and,

WHEREAS this By-law is in conformity with the Urban Hamilton Official Plan.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Map No. __ of Schedule "A" – Zoning Maps of Zoning By-law No. 05-200, be amended by changing from the Mixed Use Medium Density (C5, 570) Zone in Block 1, and Major Institutional (I3, 17) Zone in Blocks 2, 3 and 4, to Mixed Use Medium Density (C5, ____), for the lands, the extent and boundaries of which are shown on Schedule "A" annexed hereto and forming part of this By-law.
2. That Schedule "C" Special Exceptions of By-law No. 05-200 be amended by adding special exception as follows:

" ____ Within the lands zoned Mixed Use Medium Density (C5,____) identified on Map ____ of Schedule "A" Zoning Maps and described as 1630 Main Street West and 69 Sanders Boulevard the following special provisions shall apply:

- a) Notwithstanding Sections 5.6 c), 10.5.3 c), 10.5.3 d), and 10.5.3 h) i), 10.5.3 h) ii), 10.5.3 i); the following special provisions shall also apply:

REGULATIONS

- | | |
|----------------------------------------------------------|-------------------------------------------------------------------------------------|
| a) Parking Spaces | Shall be provided on the basis of 0.6 parking spaces per dwelling unit. |
| b) Minimum Setback from a Street Line (West Park Avenue) | 0.0 metres , except 1.0 metres for the portion of the building above the 6th storey |
| Minimum Setback from a Street Line (Main Street West) | 0.0 metres |

- | | |
|--------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum Setback from a Street Line (Sanders Boulevard) | 4.5 metres |
| c) Minimum Interior Side Yard Setback | 7.5 metres, except 6.2 the west Interior Lot Line |
| d) Minimum Interior Side Yard for an Underground Parking Structure | Nil |
| e) Building Height | Maximum 30.0 metres for lands identified in Block 1 and a maximum of 11.0 metres for lands identified in Block 2 as indicated on Schedule F. |
| f) Amenity Area | On a lot containing 10 dwelling units or more, the following Minimum Amenity Area requirements be provided: <ul style="list-style-type: none"> i) An area of 3.5 square metres for each dwelling unit less than or equal to 50 square metres of gross floor area; and, ii) An area of 5.5 square metres for each dwelling unit greater than 50 square metres of gross floor area. |
| g) Planting Strip | Where a property line abuts a property lot line within a Residential Zone, a minimum 0.67 metres wide Planting Strip shall be provided for Block 1. |
- b) Notwithstanding Section 2(a)(h) above, a planting strip shall not be required for the eastern property line of Block 3.
- c) In addition to the definition of a Planting Strip in Section 3, a Planting Strip may include a concrete pad for bicycle parking in Block 3.
3. The By-law No. 05-200 is amended by adding this by-law to Section__ as Schedule__;
4. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

PASSED AND ENACTED this ____ day of _____, 2022.

Mayor

Clerk




ZAC-22-_____



Figure X on Schedule F Special Figures: 1630 Main Street West and 69 Sanders Boulevard

Date:
January 10, 2022

Legend

-  Subject Lands
-  Block 1 (Max Height: 30m)
-  Block 2 (Max Height: 11m)

